IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.604 of 2006

Liberata Abel Rodrigues & Anr. .. Appellants

versus

Mrs.Blossom Olivera & Anr. .. Respondents

...

Mr.S.R. Bhalekar for the appellant.

Mr.Chirag J. Shah with Mr.J.J. Shah for the respondent.

CORAM : D.G. KARNIK, J

DATED : 21st August 2006.

P.C.:

1. Heard learned counsel for the parties. By consent, appeal is heard finally at the stage of admission.

2. This appeal is directed against the order dated 18th July 2006 passed by the learned Judge, City

Civil Court, Mumbai, on Notice of Motion no.4087 of 2005 in Suit no.4603 of 2005.

3. The suit premises are open land. The appellants filed a suit against the respondents for injunction restraining the respondents from entering upon the suit property. The appellants are the owners of the suit property and they had permitted the respondents to use the suit property for marriages and other functions and provide catering facility. The respondent did not dispute the title of the appellant but contended that by an agreement dated 1st July 2005, the appellants had handed over the possession of the suit premises to them for the purpose of running and conducting functions, festivals and ceremonies and other event managements. Though the respondents filed their affidavit in reply they were absent when the matter was heard. After hearing the learned Judge dismissed the motion. Hence the appellants plaintiffs are in appeal.

4. At the hearing of this appeal, the respondents produced copy of the agreement dated 1st July 2005 for the respondents for my inspection. Since the agreement was not produced before the trial court, the trial

court did not have the benefit of going through it. It also appears that the parties to the agreement are different from the parties to the suit. The learned trial court also had no occasion to consider the effect of this. In the circumstances, it appears that it would be appropriate to remand the matter back to the trial court with the permission to the respondents to produce the original agreement before the trial court. It would also be appropriate to give opportunity to the respondents to produce all other documents, if any on which they wish to rely. Needless to say that the appellants shall also have liberty to produce additional evidence and documents, if any, in rebuttal.

5. Accordingly, appeal is allowed. Matter is remanded back to the trial court for deciding it afresh after granting an opportunity to the parties to produce additional documents/evidence on record. Parties shall appear before the trial court on 5th September 2006.

(D.G. KARNIK, J)